

John I. Haas, Inc. and Teamsters, Food Processing Employees, Public Employees, Warehousemen and Helpers Union, Local No. 760 IBT, AFL-CIO,¹ Petitioner. Case 19-RC-12216

January 24, 1991

DECISION AND ORDER REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT, DEVANEY, OVIATT, AND
RAUDABAUGH

An election was conducted on August 14, 1990, pursuant to a Stipulated Election Agreement. Election objections were due August 21, 1990. The Regional Office received the Petitioner's election objections on August 22, 1990, and rejected them on August 23, 1990, as untimely.² On September 7, 1990, the Petitioner filed a request for review contending that there are extenuating circumstances in this case that warrant the Board's accepting the objections out of time.

The record shows that on the morning of Friday, August 17, the Petitioner's attorney instructed her secretary to have the objections delivered by messenger service that day. A messenger service employee picked up the objections at the attorney's office in Seattle and assured the attorney's secretary that delivery would take place no later than the following Monday, August 20, 1990. For unknown reasons, the messenger service failed to deliver the objections to the Regional Office until 4:44 p.m. on August 22.³

In rejecting the Petitioner's objections, the Regional Director relied on Section 102.111(b) of the Rules and Regulations and the Board's decision in *Drum Lithographers*, 287 NLRB 22 (1987). For the reasons that follow, we have decided to grant review of the Regional Director's decision, to overrule *Drum Lithographers*, and to revise our Rules and Regulations to provide that election objections will be considered timely if they are postmarked no later than the day before the due date.

Effective September 29, 1986, the Board revised its Rules and Regulations regarding the time periods for various filings. In general, time limits were expanded. Among other things, the Rules specifically adopted the Board's longstanding practice of accepting as timely papers that are postmarked at least 1 day before the date. [The "postmark" rule] Section 102.111(b). Election objections was one exception to the "postmark" rule, however. It was among the documents that Section 102.111(b) required "be received on or before the

close of business of the last day for filing."⁴ Further, Section 102.69(a) of the Rules and Regulations provided that "[w]ithin 7 [calendar] days after the tally of ballots has been prepared, any party may file with the Regional Director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election" Previously, an objector had 5 working days to file objections. The change in the Rules for filing election objections from 5 working days to 7 calendar days, coupled with the exclusion of election objections from the codification of the Board's longstanding practice of accepting as timely documents deposited in the mails on the day before the due date, served to reduce the actual time available for parties to file election objections.⁵

Since revising the Rules in 1986, the Board has construed Section 102.111(b) as requiring that election objections be received in the Regional Office on or before the due date. In *Drum Lithographers*, supra, the first case to come before the Board under the amended Rule, the Board (Member Cracraft dissenting) declined to accept as timely filed objections that were postmarked 2 days before the due date from a location 15 miles from the Regional Office. The Board observed that its rule "is explicit: objections to elections must be received—not just postmarked or otherwise transmitted—within 7 days." The Board added that the rule change put objecting parties on notice of the strict deadline and that the petitioner "could readily have met this deadline by sending the objections by express mail or telegram or by delivering them in person to the Regional Office [footnote omitted]." Id. at 23. (Emphasis supplied.)

The assumptions underlying the majority's decision in *Drum Lithographers* about an objecting party's being able to ensure delivery on the due date have proved to be too optimistic. Our experience has shown—as indeed the facts of this case demonstrate—that an objecting party acting in good faith and with all due diligence may still find its objections rejected under *Drum Lithographers* because they did not arrive at the Regional Office on the due date. We conclude

¹ On November 1, 1987, the Teamsters International Union was readmitted to the AFL-CIO. Accordingly, the caption has been amended to reflect that change.

² See Secs. 102.69(a) and 102.111(b) of the Board's Rules and Regulations.

³ In an affidavit from the owner, the messenger service accepts full responsibility for late delivery of the objections. The affidavit is silent as to why delivery was not perfected.

⁴ As explained in the rationale for the 1986 rules revisions, the exclusion of election objections from the documents that would be considered timely if deposited in the mails the day before the filing date changed the practice described in *Rio de Oro Uranium*, 119 NLRB 153 (1957). That practice had been to treat as timely election objections received after the due date when the objecting party had taken every precaution necessary to assure compliance with the Board's Rules. See 51 Fed. Reg. 237, 441 (1986).

⁵ For example, if an election was held and the tally of ballots furnished on Tuesday, May 1, objections, under the rule in effect prior to the 1986 rule changes, would have been due 5 working days later, or May 8, and would have been accepted as timely if postmarked on or before May 7. After the 1986 rule changes, objections to the same election would be due 7 calendar days after the tally of ballots was furnished, which again would be May 8, but the objections would have to be actually received by the Regional Office no later than that date. Thus, to assure sufficient time for mail delivery, objections would have to be mailed earlier than May 7 in virtually all instances.

that application of the “postmark” rule⁶ to election objections will provide a simple, fair, and effective solution to the problem. We are unaware of any administrative difficulties that existed during the 19 years that *Rio de Oro* was applied to election objections. In addition to administrative simplicity, the “postmark” rule affords more uniform access to the Board: the mails are available to everyone in virtually any place in the United States.

⁶By “postmark” we include timely depositing objections with a delivery service that will provide a record showing that the objections were tendered to the delivery service in sufficient time for delivery by the due date, but in no event any later than the day before the due date.

Members Cracraft and Devaney would go further and accept documents when the objecting party “takes every precaution necessary to ensure compliance with the Board’s rules.” See Member Cracraft’s dissent in *North Star Steel Co.*, 289 NLRB 1188 (1988), quoting *Rio de Oro Uranium Mines*, 119 NLRB 153 (1957).

Accordingly, because we find that application of the “postmark” rule to election objections will satisfy the need for administrative convenience and certainty without sacrificing the corresponding desire of the parties for finality in representation proceedings, *Drum Lithographers*, supra, is overruled. Section 102.111(b) of the Rules and Regulations will be revised to remove election objections from the documents excluded from the “postmark” rule.⁷ Because the Petitioner’s objections were timely filed under the “postmark” rule, we have remanded this case to the Regional Director to process them.⁸

⁷In the interest of uniformity, and because the Board had previously applied the principle of *Rio de Oro* to representation petitions deposited in the mails (see *Central Supply Co. of Virginia, Inc.*, 205 NLRB 642 (1970)), Sec. 102.111(b) will be further amended to bring representation petitions within our “postmark” rule.

⁸The Board’s remand Order was issued, in unpublished form, on December 23, 1990.